

**QUARTERLY ATTORNEY REPORT  
ENTERPRISE  
January 2004**

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**TO:** CRWCD ENTERPRISE BOARD OF DIRECTORS

**FROM:** PETER C. FLEMING, GENERAL COUNSEL  
JILL MCCONAUGHY, ASSOCIATE COUNSEL  
KIRSTIN MCMILLAN, STAFF COUNSEL

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Dear Directors:

This report identifies matters for potential discussion at the January 21, 2004, meeting of the River District's Enterprise. A separate Confidential Report (Attachment A to the General Report) addresses confidential matters. The information in this report is current as of January 8, 2004, and will be supplemented as necessary before or at the Board meeting.

**I. EXECUTIVE SESSION**

The following is a list of matters that qualify for discussion in executive session pursuant to C.R.S. §§ 24-6-402(4)(b) and (e):

- A. Eagle County Bolts Lake Project.
- B. Update on Elkhead Reservoir Enlargement Negotiations.
- C. Applications of Grand River Ranch, LLC, Case Nos. 01CW40 and 01CW41, Water Division 5.
- D. Wolford Mountain Reservoir Hydro-Electric Project.
- E. Wolford Mountain Reservoir 2<sup>nd</sup> Enlargement Application, Case No. 03CW302, Water Division 5.

**II. CONSENT AGENDA**

*We propose that the Board approve the following items on a consent agenda.* Of course, the Board may choose to remove any item from the consent agenda.

- A. Ratification of Joint Application with Colorado Springs for the Colorado Springs Substitution Plan, Case No. 03CW320, Water Division 5 and Federal District Court of Colorado.**

Pursuant to the Board's prior direction, we negotiated and executed the May 15, 2003, Colorado Springs Substitution MOA that provides an agreed mechanism for Colorado Springs to divert its upper Blue River System water rights (a.k.a. the Hoosier Pass System) against the senior fill priority of Green Mountain Reservoir. The MOA provides, among other requirements, that (1) Colorado Springs will provide replacement or substitute supplies of water to cover its out-of-priority

diversions to Green Mountain Reservoir, (2) that Colorado Springs and the River District will file a joint application to adjudicate the substitution plan, and (3) that the application also adjudicate the reservoir “bookover” (*i.e.* trade) whereby the River District acquires yield from Colorado Springs’ Upper Blue Reservoir and Colorado Springs acquires certain rights to water stored in the River District’s Wolford Mountain Reservoir. We worked with Colorado Springs to draft the required application and filed the application at the end of December. A copy of the application is included with your Board material as Attachment B to this memo. *We recommend that the Board ratify the application by approval of the consent agenda.*

**B. Ratification of Application for Wolford Mountain Reservoir, Second Enlargement, Case No. 03CW302, Water Division 5.**

Pursuant to the Board’s Resolution of November 17, 2003, we drafted and filed an application to adjudicate a conditional storage right for the Wolford Mountain Reservoir, Second Enlargement. The application claims an additional 9,775 acre feet of storage and claims a variety of uses, including use by substitution or exchange in Water Divisions 1 and 2. However, any transmountain use, whether indirect or otherwise, would be subject to the express approval of the Board. A copy of the application is included with your Board material as Attachment C. *We recommend that the Board ratify the application by approval of the consent agenda.*

### **III. WATER PROJECTS**

**A. Eagle County and the Town of Minturn - Bolts Lake Project.**

We have had very preliminary discussions with Eagle County and the Town of Minturn about an agreement to develop Bolts Lake Reservoir as a small water supply facility (about 150 to 300 acre feet). The reservoir site is located just upstream of Minturn between the Eagle River and Cross Creek. The source of water would most likely be Cross Creek. We would like to explore with the Board whether to look at this project more closely. We hope to have more information in time for the Board meeting. *The Board may wish to discuss this matter further in executive session.*

**B. Elkhead Reservoir Enlargement.**

There continues to be both progress and delay on the many different agreements related to the development of the Elkhead Reservoir Enlargement. A separate confidential memo from Dan Birch to Peter Fleming regarding the status of the negotiations is included with your Board material as Attachment D. *The Board may wish to discuss these issues further in executive session.*

**C. River District’s Application to Make Absolute the Wolford Mountain Reservoir First Enlargement, Case No. 03CW192, Water Division 5.**

On August 29, 2003, we filed an application to make the Wolford Mountain Reservoir First Enlargement water right absolute and, in the alternative, for a finding of reasonable diligence. The period for filing statements of opposition expired at the end of October, and no statements of opposition were filed. We received the Division Engineer’s summary of consultation in November,

and it recommends that the application be granted. We are working on a draft decree for the water referee's consideration.

**D. Wolford Mountain Reservoir Hydro-Electric Project.**

We are in the process of reviewing how the Wolford Hydro-Electric Project and the proposed Wolford Second Enlargement may interact. It does not appear initially that the enlargement would present a technical complication for the hydro-electric plant (or vis versa), but it is possible that the enlargement could complicate the permitting process for the hydro-electric plant if the two projects are pursued simultaneously. *These issues are discussed further in the Confidential Report and the Board may wish to discuss the issues further in executive session.*

**IV. OTHER MATTERS**

**A. Eagle County's Shares in the Eagle Park Reservoir Company.**

Last year, we assigned Eagle County 500 shares in the Eagle Park Reservoir Company (representing 50 acre feet of yield) pursuant to a pre-existing agreement that required the River District to assign the shares to Eagle County upon request. The county subsequently transferred 240 of the shares to the Upper Eagle Regional Water Authority. The county has determined that it does not currently need the remaining 260 shares and, for various reasons, has proposed to reconvey those shares back to the River District. The county's attorney, David Hallford, has taken a shot at drafting a MOA to govern the reassignment and subsequent use of the shares by the county and the River District. The basic concepts of the proposed MOA are that:

1. Eagle County will transfer the shares back to the River District without charge to the River District.
2. The River District will hold the shares for use by Eagle County, or for subsequent transfer of the shares back to Eagle County in the future. The use by Eagle County or subsequent transfer (the "re-re-assignment") would be without charge, except for assessments and customary "OM&R" charges.
3. Eagle County will continue to pay the annual and special assessments on the shares even when held by the River District without use by the county.
4. The River District can utilize the shares or lease the shares to third parties, subject to Eagle County's right to demand transfer of the shares back to the county.

We do not currently request any action by the Board because there are a number of issues that still need to be worked out, most importantly, determining what use the River District can make of the shares if they are encumbered by Eagle County's right to demand the use or transfer of the shares back to the county. One possibility may be to stagger Eagle County's right to demand transfer back to the county over a relatively long period of years. That would allow Eagle County access to some of the shares but also would provide the River District with certainty that a set

number of shares could not be transferred back to the county for a certain period. In any case, we are willing to further explore Eagle County's proposal and may have additional information to report at the Board meeting.

**B. Rendezvous Applications, Cases No. 01CW357 & 01CW358, Water Division 5.**

These are applications by the Rendezvous Commercial Metropolitan District, Rendezvous Residential Metropolitan District, and Rendezvous Colorado, LLC for junior water rights on the Fraser River and an exchange involving the River District's Colorado River Supply. The applicant originally requested that the River District assign a portion of the River District's conditional Fraser Project (a.k.a. Ranch Creek) water rights to the applicant for use in conjunction with this project; however, the applicant recently withdrew that request and asked the River District to stipulate to decrees that do not include the River District's Fraser Project water rights. We have resolved other relatively minor concerns with the applicants and have entered into stipulations consenting to proposed rulings in both cases.

**C. Applications of Grand River Ranch, LLC, Case Nos. 01CW40 and 01CW41, Water Division 5.**

David Hallford has been representing the River District's interests in these cases. David has prepared a confidential memo on the cases that is included in your Board material as Attachment E. *The Board may wish to discuss these cases further in executive session.*

Attachments:

- A. Confidential Report from P. Fleming, January 8, 2004 (attached to General Report).
- B. Joint Application with Colorado Springs for the Colorado Springs Substitution Plan, Case No. 03CW320, Water Division 5 and Federal District Court of Colorado, dated 12/31/03.
- C. Application for Wolford Mountain Reservoir, Second Enlargement, Case No. 03CW302, Water Division 5, dated 12/30/03.
- D. Confidential Memo from D. Birch to P. Fleming regarding Elkhead Negotiations, dated 1/9/04.
- E. Confidential Memo from D. Hallford to CRWCD Board regarding Gallagher Ranch, dated 1/9/04.